

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

The Ford Store
2763 Teagarden Street
San Leandro, California 94577

ID No. CAR 000 012 260

Respondent.

Docket HWCA20030318

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and The Ford Store (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generated hazardous waste at 2763 Teagarden Street, San Leandro, California 94577 (Site).

2. The Department inspected the Site on October 30, 2000 and December 6, 2001.

3. The Department alleges the following violations:

3.1 The Respondent violated title 22, California Code of Regulations (Cal. Code Regs.), section 66262.11 in that on or about October 30, 2000 a waste determination for the painting and buffing dust wastes had not been completed.

3.2 The Respondent violated California Health & Safety Code (Health & Saf. Code) section 25143.2(d)(4) in that on or about October 30, 2000 waste oil and antifreeze were consolidated at a location without proper documentation of shipment of such wastes.

3.3 The Respondent violated California Health & Saf. Code, § 25187.8(b) in that on or about November 30, 2000 and December 15, 2000 in that, they failed to sign and return a notice to comply certifying correction of minor violations noted during an October 30, 2000 inspection. The following minor violations were noted in the October 30, 2000 Summary of Violations (SOV) and in the November 15, 2000 inspection report:

3.3.1 The Respondent did fail to properly label the drum containing paint filters in that it lacked an address, accumulation start date, and the properties of the waste.

3.3.2 The Respondent did fail to label the satellite accumulation container located in the mix room.

3.3.3 The Respondent did fail to label a 5-gallon container of lacquer thinner located in the flammable storage cabinet.

3.3.4 The Respondent did fail to properly mark a used lead-acid automotive battery with the date it was removed from service.

3.3.5 The Respondent did fail to label and keep closed a 55-gallon container of waste antifreeze.

3.3.6 The Respondent did fail to label satellite accumulation containers holding waste oil, an unidentified red liquid, and waste antifreeze.

3.3.7 The Respondent did fail to post complete emergency procedure information near a telephone.

3.3.8 The Respondent did fail to demonstrate that employees had been trained or were familiar with proper waste handling procedures.

3.3.9 The Respondent did fail to inspect containers holding hazardous waste at least weekly.

3.3.10 The Respondent did fail to provide adequate aisle space for the inspection and unobstructed movement of a container or waste antifreeze.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health & Saf. Code, § 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

9. The Respondent has demonstrated compliance with all above listed violations.

9.1 The Respondent shall send two employees to attend the California Compliance School to complete hazardous waste training Modules I, II, III, and IV. Respondent must submit, for both employees, Certificates of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the effective date of this order.

The certificates shall be submitted to:

Department of Toxic Substances Control
Statewide Compliance Division
State Oversight and Enforcement Branch
8800 Cal Center Drive
Sacramento, California 95826-3200
ATTN: Charles A. McLaughlin, Chief

9.2. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.3. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

9.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.5. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.6. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

9.7. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.8. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.9. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

10. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$11,000.00 of which \$6,713.41 is a penalty and \$4,286.59 is reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

Photocopies of the check shall be sent simultaneously to:

Mr. Charles A. McLaughlin, Chief
Department of Toxic Substances Control
Statewide Compliance Division
State Oversight and Enforcement Branch
8800 Cal Center Drive
Sacramento, California 95826-3200

Ms. Colleen Heck
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health & Saf. Code, § 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

10.1 If the Respondent fails to submit the Certificates of Satisfactory Completion as required in Section 9.1 above, Respondent shall pay the Department an additional \$5,000.00 as penalty within 30 days after the expiration of the 185 day period. The payment of the additional \$5,000.00 together with a copy of this Order shall be sent to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

Photocopies of the check shall be sent simultaneously to:

Mr. Charles A. McLaughlin, Chief
Department of Toxic Substances Control
Statewide Compliance Division
State Oversight and Enforcement Branch
8800 Cal Center Drive
Sacramento, California 95826-3200

Ms. Colleen Heck
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to submit the Certificates of Satisfactory Completion and fails to make the additional payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health & Saf. Code, § 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

11.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health & Saf. Code, § 25188 and other applicable provisions of law.

11.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: June 14, 2004

original signed by Tim Paulus

Signature of Respondent's Representative

Tim Paulus, President

Typed or Printed Name and Title of
Respondent's Representative

Dated: June 30, 2004

original signed by Charles A. McLaughlin

Mr. Charles A. McLaughlin, Chief
Statewide Oversight & Enforcement Branch
Department of Toxic Substances Control